



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

5636 Southern Boulevard, Virginia Beach, Virginia 23462

(757) 518-2000 Fax (757) 518-2103

www.deq.virginia.gov

L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Francis L. Daniel
Regional Director

April 22, 2008

Mr. Norm Smith
c/o: Mr. John Lowenthal
The Landmark Design Group, Inc.
5544 Greenwich Road, Suite 200
Virginia Beach, Virginia 23462

RE: Final VWP Permit Issuance
Joint Permit Application Number 07-2547
Hawks Nest Golf Course Water Withdrawal
York County, Virginia

Dear Mr. Smith:

Pursuant to the Virginia Water Protection (VWP) Permit Program Regulation 9 VAC 25-210-10 et seq., § 401 of the Clean Water Act Amendments of 1977, and Public Law 95-217, the Department of Environmental Quality (DEQ) has enclosed the original VWP individual permit for the referenced project. The proposed project will allow the withdrawal of surface water from the overflow pipe below the dam of Hipps Pond, which shall not exceed a maximum daily withdrawal volume of 633,600 gallons; and shall not exceed a maximum instantaneous withdrawal rate of 440 gallons per minute with a constant flow-by rate of 0.1 cfs (64,632 gallons per day) when the discharge rate from the Hipps Pond is at least 0.1 cfs (64,632 gallons per day).

This permit is valid for 10 years from the date of issuance. Continuation of the permit may be necessary if any portion of the authorized activities or any permit requirement, including compensatory mitigation provisions, have not been completed. The total permit term, including any extensions, cannot exceed 15 years. An extension may be requested through written notification to the Department of Environmental Quality Tidewater Regional Office, provided that there are no changes in the authorized activities.

As provided by Rule 2A:2 of the Supreme Court of Virginia, you have **30 calendar days** from the date of service (the date you actually received this decision or the date it was mailed to you,

Norm Smith
April 22, 2008
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whichever occurred first) within which to appeal this decision by filing a notice of appeal in accordance with the Rules of the Supreme Court of Virginia with the Director, Department of Environmental Quality. In the event that this decision is served on you by mail, three days are added to that period. Refer to Part 2A of the Rules of the Supreme Court of Virginia for additional requirements governing appeals from administrative agencies.

Alternatively, any owner under §§62.1-44.16, 62.1-44.17, and 62.1-44.19 of the State Water Control Law aggrieved by any action the board has taken without a formal hearing, or by inaction of the board, may demand in writing a formal hearing of such owner's grievance, provided a petition requesting such hearing is filed with the board. Said petition must meet the requirements set forth in the board's Procedural Rule Number 1 (9 VAC 25-230-130 B). In cases involving actions of the board, such petition must be filed within 30 calendar days after notice of such action is sent to such owner by certified mail.

If you have any questions, please contact Mark Kalnins at 757-518-2160 or by email at mgkalnins@deq.virginia.gov.

Sincerely,



Bert W. Parolari, Jr.
Virginia Water Protection Permit Manager

Enclosure (1)

cc: Kim Baggett, U.S. Army Corps of Engineers (w/encl.)
Randy Owen, Virginia Marine Resources Commission (w/encl.)



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VWP Individual Permit Number **07-2547**

Effective Date: **April 22, 2008**

Expiration Date: **April 21, 2018**

VIRGINIA WATER PROTECTION PERMIT ISSUED PURSUANT TO THE STATE WATER CONTROL LAW AND SECTION 401 OF THE CLEAN WATER ACT

Based upon an examination of the information submitted by the owner, and in compliance with § 401 of the Clean Water Act as amended (33 USC 1341) and the State Water Control Law and regulations adopted pursuant thereto, the State Water Control Board (board) has determined that there is a reasonable assurance that the activity authorized by this permit, if conducted in accordance with the conditions set forth herein, will protect instream beneficial uses and will not violate applicable water quality standards. The board finds that the effect of the impact, together with other existing or proposed impacts to surface waters, will not cause or contribute to a significant impairment to state waters or fish and wildlife resources.

Permittee: Norm Smith


Address: 740 Thimble Shoals Boulevard, Suite E
Newport News, Virginia 23606

Activity Location: Hawks Nest Golf Course
1801 Penniman Road, Virginia

Activity Description: The withdrawal of surface water from the overflow pipe below the dam of Hipps Pond. The withdrawal shall not exceed a maximum daily withdrawal volume of 633,600 gallons. The withdrawal shall not exceed a maximum instantaneous withdrawal rate of 440 gallons per minute. A minimum flow-by of 0.1 cfs (64,632 gallons per day) shall be allowed to pass by the compartment of the withdrawal tank housing the submersible intake pumps when discharge from the Hipps Pond is at least 0.1 cfs (64,632 gallons per day).

The permitted activity shall be in accordance with this Permit Cover Page, Part I - Special Conditions, and Part II - General Conditions.


Maria R. Nold, Deputy Regional Director


Date

Part I – Special Conditions

Authorized Activities and Permit Term

A. Authorized Activities

This permit authorizes the following minor surface water withdrawal as indicated in the Joint Permit Application received on November 27, 2007, and supplemental materials, revisions and clarifications received through February 1, 2008, including a schematic titled, "Figure 1-3: Storage Tank Supply Pumping System", received by DEQ on February 1, 2008:

1. The withdrawal of surface water from the overflow pipe below the dam of Hipps Pond, shall not exceed a maximum daily withdrawal volume of 633,600 gallons; shall not exceed a maximum instantaneous withdrawal rate of 440 gallons per minute with a constant flow-by rate of 0.1 cfs (64,632 gallons per day) when the discharge rate from the Hipps Pond is at least 0.1 cfs (64,632 gallons per day). Authorization of this withdrawal shall also be subject to the conditions in Part I.E. below.

B. Permit Term

This permit is valid for 10 years from the date of issuance. An extension of this permit term or a new permit may be necessary for the continuance of the authorized activities, including water withdrawals, or any permit requirement that has not been completed, including compensation provisions. The permit term, including any granted extensions, shall not exceed 15 years.

The permittee shall notify DEQ in writing at least 120 calendar days prior to the expiration of this permit if an extension of the permit term is required.

Project Construction at Impact Site

C. Standard Project Conditions

1. The activities authorized by this permit shall be executed in such a manner that any impacts to stream beneficial uses are minimized. As defined in § 62.1-10(b) of the Code, "beneficial use" means both instream and offstream uses. Instream beneficial uses include, but are not limited to, the protection of fish and wildlife habitat, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. Offstream beneficial uses include, but are not limited to, domestic (including

public water supply), agricultural, electric power generation, commercial, and industrial uses. Public water supply uses for human consumption shall be considered the highest priority.

2. No activity shall substantially disrupt the movement of aquatic life indigenous to the water body, including those species that normally migrate through the area, unless the primary purpose of the activity is to impound water.
3. Flows downstream of the project area shall be maintained to protect all uses.
4. All in-stream activities shall be conducted during low-flow conditions whenever practicable.
5. All construction, construction access, and demolition activities associated with this project shall be accomplished in a manner that minimizes construction materials or waste materials from entering surface waters, unless authorized by this permit. Wet, excess, or waste concrete shall be prohibited from entering surface waters.
6. Measures shall be employed at all times to prevent and contain spills of fuels, lubricants, or other pollutants into surface waters.
7. Temporary disturbances to wetlands, stream channels, and/or stream banks during project construction activities shall be avoided and minimized to the maximum extent practicable.
8. Virginia Water Quality Standards shall not be violated in any surface waters as a result of the project activities.
9. Erosion and sedimentation controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, or the most recent version in effect at the time of construction. These controls shall be placed prior to clearing and grading activities and shall be maintained in good working order, to minimize impacts to surface waters. These controls shall remain in place only until clearing and grading activities cease and these areas have been stabilized.
10. All *non-impacted* wetlands, streams, and designated upland buffers that are within the project or right-of-way limits, and that are within fifty feet of any project activities, shall be clearly flagged or demarcated for the life of the construction activity within that area. All non-impacted open water areas within the project or right-of-way limits, and that are within fifty feet of any project activities, shall be clearly flagged or demarcated, as practicable, for the life of the construction activity within that area.

The permittee shall notify all contractors and subcontractors that *no activities are to occur in these marked areas.*

11. All required notifications and submittals shall be submitted to the DEQ office stated below, to the attention of the VWP permit manager, unless directed in writing by DEQ subsequent to the issuance of this permit:

Virginia Department of Environmental Quality
Tidewater Regional Office
5636 Southern Boulevard
Virginia Beach, Virginia 23462

12. All reports required by this permit and other information requested by DEQ shall be signed by the permittee or a person acting in the permittee's behalf, with the authority to bind the permittee. A person is a duly authorized representative only if *both* criteria below are met. If a representative authorization is no longer valid because of a change in responsibility for the overall operation of the facility, a new authorization shall be immediately submitted to DEQ.
 - a. The authorization is made in writing by the permittee.
 - b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, or position of equivalent responsibility. A duly authorized representative may thus be either a named individual or any individual occupying a named position.
13. All submittals shall contain the following signed certification statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."
14. Any fish kills or spills of fuels or oils shall be reported to DEQ immediately upon discovery at 757-518-2077. If DEQ cannot be reached, the spill shall be reported to the Virginia Department of Emergency Management (DEM) at 1-800-468-8892 or the National Response Center (NRC) at 1-800-424-8802.

15. DEQ shall be notified in writing within 24 hours or as soon as possible on the next business day when potential environmentally threatening conditions are encountered which require debris removal or involve potentially toxic substances. Measures to remove the obstruction, material, or toxic substance or to change the location of any structure are prohibited until approved by DEQ.
16. The permittee shall notify the DEQ of any additional impacts to surface waters, including wetlands; of any modifications of the intake structure; and of any change to the type of surface water impacts associated with this project. Any additional impacts, modifications, or changes shall be subject to individual permit review and/or modification of this permit. Compensation may be required.

D. Projects Involving Stream Modifications, Including Intake/Outfall Structures

1. Any exposed slopes or streambanks shall be stabilized immediately upon completion of work in each impact area. Methods and materials for stabilization shall be in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, or the most recent version in effect at the time of construction.
2. Redistribution of existing stream substrate for erosion control purposes is prohibited.
3. Riprap apron for all outfalls shall be designed in accordance with Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, or the most recent version in effect at the time of construction.
4. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of submerged sills, breakwaters, dams, or weirs.

E. Projects Involving Surface Water Withdrawals

1. Water withdrawal rates and volumes shall comply with the limits set forth in Part I.A.
2. The permittee shall monitor withdrawals on a daily basis to confirm that the withdrawals are in compliance with special conditions of this permit.
3. A minimum flow-by of 0.1 cfs (64,632 gallons per day) shall be allowed to pass by the compartment of the withdrawal tank housing the submersible intake pumps when discharge from the Hipps Pond is at least 0.1 cfs (64,632 gallons per day). The permittee shall keep a record of the dates and time that stream flow-by is measured, to be recorded in cubic feet per second (cfs) and gallons per day (gpd), at the downstream weir, and the name of the individual reporting the data. Such data shall

be recorded once per calendar day for the months of May, June, July, August, September, October and November of each permit year and shall be retained for the life of the permit.

4. Water withdrawal monitoring and reporting activities shall comply with this section, Part I.C, and Part II. All records and information that result from the monitoring and reporting activities required by this permit, including any records of maintenance activities to the withdrawal system, shall be retained for the life of the permit. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or as requested by the State Water Control Board.
5. A brief report shall be prepared summarizing the dates on which the flow-by rate did not meet the minimum of 64,632 gallons per day (gpd) when discharge from the Hipps Pond is at least 0.1 cfs (64,632 gpd), as required by this permit. The report shall include the volume(s) of water withdrawn. Each monitoring report shall be submitted to DEQ by the 10th of the month following data collection (e.g., should May experience days of below minimum flow-by, the monitoring report shall be due June 10th of the applicable year).
6. *For all permittees whose average daily withdrawal during any single month exceeds 10,000 gallons per day, the water withdrawals shall be reported to DEQ by January 31st of the next year, as required under State Water Control Board (SWCB) Water Withdrawal Reporting Regulation (9 VAC 25-200 et seq.). The annual monitoring report shall contain the following information: the permittee's name and address, the sources and locations of water withdrawal, the cumulative volume of water withdrawn each month of the calendar year, the maximum day withdrawal and the month in which it occurred, and the method of withdrawal measurement. For permittees subject to the Virginia Department of Health (VDH) Waterworks Regulations, the annual reports to DEQ may include, as an alternative, the source and location of water withdrawals, the type of use for the water withdrawn, and reference to the reports filed with VDH that contain the monthly withdrawal data.*

F. Project Construction Monitoring and Submittals (Impact Site)

Pre-Construction Monitoring

1. The permittee shall conduct photographic monitoring of pre-construction conditions below the Hipps Pond dam at the location of the water withdrawal structure(s). Photographic monitoring shall be conducted by the following method: Enumerated photo stations shall be established at each permitted impact area that shall be used for

the duration of construction activities. The directional orientation of each photo station shall remain constant during all monitoring events. Photo stations shall be sufficient to represent permitted activities. Each photograph taken shall be labeled with the permit number, the permitted impact area, the photo station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. This information shall be provided as a separate attachment to each photograph, if necessary.

Pre-Construction Submittals

2. Final plans for the water withdrawal structure(s) shall be submitted 30 calendar days prior to initiating any land disturbance or construction in permitted impact areas. Construction activities shall not be initiated until DEQ has both reviewed and commented on the plans, or until 30 calendar days have passed, during which time no DEQ comments were received regarding the plan. In the event DEQ submits comments on the final plans, construction shall not proceed until comments are resolved to DEQ's satisfaction.
3. Construction shall be performed in accordance with the final construction plans submitted to DEQ, which shall be in compliance with the Permit. Any changes to the final plans for permitted areas shall be submitted to DEQ immediately upon determination that changes are necessary. DEQ approval shall be required prior to implementing the changes.
4. The permittee shall submit written notification at least ten calendar days prior to the initiation of land disturbance or construction activities in permitted areas. The notification shall include a projected schedule for initiating and completing work at each permitted impact area.

Post-Construction Monitoring

5. The permittee shall conduct photographic monitoring of all permitted impact areas upon completion of construction and stabilization of the area. The permittee shall use the same photo method and location that was used for pre-construction monitoring.

Post-Construction Submittals

6. Pre-construction and post-construction photographs of permitted impact areas shall be submitted within 30 calendar days of completing work in each permitted area.

Part II - General Conditions

A. Duty to Comply

The permittee shall comply with all conditions of the VWP permit. Nothing in the VWP permit regulations shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations and prohibitions. Any VWP permit violation is a violation of the law, and is grounds for enforcement action, VWP permit termination, revocation, modification, or denial of an application for a VWP permit extension or reissuance.

B. Duty to Cease or Confine Activity

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which a VWP permit has been granted in order to maintain compliance with the conditions of the VWP permit.

C. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any impacts in violation of the permit which may have a reasonable likelihood of adversely affecting human health or the environment.

D. VWP Permit Action

1. A VWP permit may be modified, revoked and reissued, or terminated as set forth in 9 VAC 25-210 et seq.
2. If a permittee files a request for VWP permit modification, revocation, or termination, or files a notification of planned changes, or anticipated noncompliance, the VWP permit terms and conditions shall remain effective until the request is acted upon by the board. This provision shall not be used to extend the expiration date of the effective VWP permit. If the permittee wishes to continue an activity regulated by the VWP permit after the expiration date of the VWP permit, the permittee must apply for and obtain a new VWP permit or comply with the provisions of 9 VAC 25-210-185 (VWP Permit Extension).
3. VWP permits may be modified, revoked and reissued or terminated upon the request of the permittee or other person at the board's discretion, or upon board initiative to reflect the requirements of any changes in the statutes or regulations, or as a result of VWP permit noncompliance as indicated in the Duty to Comply subsection above, or for other reasons listed in 9 VAC 25-210-180 (Rules for Modification, Revocation and Reissuance, and Termination of VWP permits).

E. Inspection and Entry

Upon presentation of credentials, any duly authorized agent of the board may, at reasonable times and under reasonable circumstances:

1. Enter upon any permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the VWP permit conditions;
2. Inspect any facilities, operations or practices (including monitoring and control equipment) regulated or required under the VWP permit, and
3. Sample or monitor any substance, parameter or activity for the purpose of ensuring compliance with the conditions of the VWP permit or as otherwise authorized by law.

F. Duty to Provide Information

1. The permittee shall furnish to the board any information which the board may request to determine whether cause exists for modifying, revoking, reissuing or terminating the VWP permit, or to determine compliance with the VWP permit. The permittee shall also furnish to the board, upon request, copies of records required to be kept by the permittee.
2. Plans, specifications, maps, conceptual reports and other relevant information shall be submitted as required by the board prior to commencing construction.

G. Monitoring and Records Requirements

1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the VWP permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 (2000), Guidelines Establishing Test Procedures for the Analysis of Pollutants.
2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP permit, and records of all data used to complete the application for the VWP permit, for a period of at least three years from the date of the expiration of a granted VWP permit. This period may be extended by request of the board at any time.

4. Records of monitoring information shall include:
 - a. The date, exact place and time of sampling or measurements;
 - b. The name of the individuals who performed the sampling or measurements;
 - c. The date and time the analyses were performed;
 - d. The name of the individuals who performed the analyses;
 - e. The analytical techniques or methods supporting the information such as observations, readings, calculations and bench data used;
 - f. The results of such analyses; and
 - g. Chain of custody documentation.

H. *Transferability*

This VWP permit may be transferred to a new permittee only by modification to reflect the transfer, by revoking and reissuing the permit, or by automatic transfer. Automatic transfer to a new permittee shall occur if:

1. The current permittee notifies the board within 30 days of the proposed transfer of the title to the facility or property;
2. The notice to the board includes a written agreement between the existing and proposed permittee containing a specific date of transfer of VWP permit responsibility, coverage and liability to the new permittee, or that the existing permittee will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of any enforcement activities related to the permitted activity; and
3. The board does not within the 30-day time period notify the existing permittee and the new permittee of its intent to modify or revoke and reissue the VWP permit.

I. *Property rights*

The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize injury to private property or any invasion of personal rights or any infringement of federal, state or local law or regulation.

J. Reopener

Each VWP permit shall have a condition allowing the reopening of the VWP permit for the purpose of modifying the conditions of the VWP permit to meet new regulatory standards duly adopted by the board. Cause for reopening VWP permits includes, but is not limited to when the circumstances on which the previous VWP permit was based have materially and substantially changed, or special studies conducted by the board or the permittee show material and substantial change, since the time the VWP permit was issued and thereby constitute cause for VWP permit modification or revocation and reissuance.

K. Compliance with State and Federal Law

Compliance with this VWP permit constitutes compliance with the VWP permit requirements of the State Water Control Law. Nothing in this VWP permit shall be construed to preclude the institution of any legal action under or relieve the permittee from any responsibilities, liabilities, or other penalties established pursuant to any other state law or regulation or under the authority preserved by § 510 of the Clean Water Act.

L. Severability

The provisions of this VWP permit are severable.

M. Permit Modification

A VWP permit may be modified, but not revoked and reissued except when the permittee agrees or requests, when any of the following developments occur:

1. When additions or alterations have been made to the affected facility or activity which require the application of VWP permit conditions that differ from those of the existing VWP permit or are absent from it;
2. When new information becomes available about the operation or activity covered by the VWP permit which was not available at VWP permit issuance and would have justified the application of different VWP permit conditions at the time of VWP permit issuance;
3. When a change is made in the promulgated standards or regulations on which the VWP permit was based;
4. When it becomes necessary to change final dates in schedules due to circumstances over which the permittee has little or no control such as acts of God, materials shortages, etc. However, in no case may a compliance schedule be modified to extend beyond any applicable statutory deadline of the Act;

5. When changes occur which are subject to "reopener clauses" in the VWP permit; or
6. When the board determines that minimum instream flow levels resulting from the permittee's withdrawal of water are detrimental to the instream beneficial use and the withdrawal of water should be subject to further net limitations or when an area is declared a Surface Water Management Area pursuant to §§ 62.1-242 through 62.1-253 of the Code of Virginia, during the term of the VWP permit.

N. *Permit Termination*

After notice and opportunity for a formal hearing pursuant to Procedural Rule No. 1 (9 VAC 25-230-100) a VWP permit can be terminated for cause. Causes for termination are as follows:

1. Noncompliance by the permittee with any condition of the VWP permit;
2. The permittee's failure in the application or during the VWP permit issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;
3. The permittee's violation of a special or judicial order;
4. A determination by the board that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by VWP permit modification or termination;
5. A change in any condition that requires either a temporary or permanent reduction or elimination of any activity controlled by the VWP permit; and
6. A determination that the permitted activity has ceased and that the compensatory mitigation for unavoidable adverse impacts has been successfully completed.

O. *Civil and Criminal Liability*

Nothing in this VWP permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

P. *Oil and Hazardous Substance Liability*

Nothing in this VWP permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

Q. *Unauthorized Discharge of Pollutants*

Except in compliance with this VWP permit, it shall be unlawful for the permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;
2. Excavate in a wetland;
3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses.
4. On or after October 1, 2001 conduct the following activities in a wetland:
 - a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions
 - b. Filling or dumping
 - c. Permanent flooding or impounding
 - d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

R. *Permit Extension*

1. Any permittee with an effective VWP permit for an activity that is expected to continue after the expiration date of the VWP permit, without any change in the activity authorized by the VWP permit, shall submit written notification request if an extension. The permittee must file the request prior to the expiration date of the VWP permit. Under no circumstances will the extension be granted for more than 15 years beyond the original effective date of the VWP permit. If the request for extension is denied, the VWP permit will still expire on its original date and, therefore, care should be taken to allow for sufficient time for the board to evaluate the extension request and to process a full VWP permit modification, if required.